

## Message Text

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ORIGIN EUR-12

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E.O. 11652: N/A

TAGS: AFSP, EFIN, IT

SUBJECT: FSLE TAX WITHHOLDING

REF: ROME 5370

1. LEGAL BASIS THAT PROHIBITS USG FROM WITHHOLDING FSLE  
INCOME TAXES IS A COMPTROLLER GENERAL DECISION 31 CG 123  
(B-104845) WHICH IS QUOTED BELOW:  
"TAXES--FOREIGN--WITHHOLDING--NATIVES EMPLOYED BY UNITED  
STATES IN FOREIGN COUNTRIES  
THE UNITED STATES HAS NO OBLIGATION UNDER INTERNATIONAL LAW  
TO COMPLY WITH LAWS OF FOREIGN GOVERNMENTS RELATIVE TO THE  
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WITHHOLDING OF TAXES FROM THE SALARIES OF THEIR NATIONALS  
IN THE ABSENCE OF A STATUTE, TREATY, OR PROPER EXECUTIVE  
AGREEMENT PROVIDING FOR THE WITHHOLDING OF SUCH TAXES AND  
THEREFORE, AN INCOME TAX LEVIED BY A FOREIGN GOVERNMENT ON  
ITS NATIONALS MAY NOT BE WITHHELD BY AN AGENCY OF THE  
UNITED STATES FROM THE SALARIES OF NATIONALS EMPLOYED IN  
THAT COUNTRY.

COMPTROLLER GENERAL WARREN TO THE SECRETARY OF THE AIR  
FORCE, OCTOBER 3, 1951:  
REFERENCE IS MADE TO LETTER, DATED JULY 20, 1951, FROM THE

ASSISTANT SECRETARY OF THE AIR FORCE, REQUESTING THAT YOUR  
DEPARTMENT BE PERMITTED TO DEDUCT FOREIGN GOVERNMENT IN-  
COME TAX PAYMENTS FROM SALARIES OF NON-UNITED STATES  
CITIZEN CIVILIAN EMPLOYEES AT INSTALLATIONS, ACTIVITIES,  
AND COMMANDS SITUATED IN FOREIGN COUNTRIES.  
WHILE IT IS STATED IN THE LETTER THAT THE FAILURE OF YOUR  
DEPARTMENT TO WITHHOLD SUCH TAXES AT THE SOURCE IN ACCORD-  
ANCE WITH LOCAL LAW MAY JEOPARDIZE THE RELATIONS BETWEEN  
THIS GOVERNMENT AND THE FOREIGN GOVERNMENTS INVOLVED, IN  
THAT SUCH GOVERNMENTS HAVE GREAT DIFFICULTY IN OTHERWISE  
COLLECTING TAXES, IT IS NOT CONTENDED THEREIN THAT THE  
FAILURE TO WITHHOLD THE TAXES HAS JEOPARDIZED SUCH RELA-  
TIONS. BUT BE THAT AS IT MAY, IT WAS HELD IN OFFICE  
DECISION OF MARCH 29, 1944, 23 COMP. GEN. 733, THAT IN  
THE ABSENCE OF A STATUTE OR TREATY TO THE CONTRARY, PAY  
ROLL DEDUCTIONS COULD NOT BE MADE PURSUANT TO BRAZILIAN  
SOCIAL SECURITY LAWS FROM THE SALARIES OF BRAZILIAN NA-  
TIONALS WHO WERE CIVILIAN EMPLOYEES OF THE NAVY DEPARTMENT.  
WHAT IS STATED THEREIN WITH RESPECT TO MAKING SUCH PAY  
ROLL DEDUCTIONS IS EQUALLY APPLICABLE TO THE SITUATION  
HERE INVOLVED. THE THEORY UNDERLYING THAT DECISION IS THAT  
SINCE THE UNITED STATES GOVERNMENT HAS NO OBLIGATION UNDER  
INTERNATIONAL LAW TO COMPLY WITH FOREIGN LAWS RELATIVE TO  
THE WITHHOLDING OF TAXES ON BEHALF OF FOREIGN GOVERNMENTS,  
ANY EXPENSE INCURRED IN WITHHOLDING SUCH TAXES WOULD NOT  
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BE IN SATISFACTION OF A 'NECESSARY EXPENSE' OF THE DEPART-  
MENT OR AGENCY INVOLVED SO AS TO BE PROPERLY CHARGEABLE TO  
ITS APPROPRIATION. THE QUESTION HERE FOR DECISION, THERE-  
FORE, IS WHETHER THE ADMINISTRATIVE EXPENSE IN WITHHOLDING  
THE TAXES AND PAYMENT THEREOF TO THE FOREIGN GOVERNMENTS  
INVOLVED IS A 'NECESSARY EXPENSE' OF YOUR DEPARTMENT.  
THERE IS QUOTED THE FOLLOWING DIPLOMATIC INSTRUCTION BY THE  
ASSISTANT SECRETARY OF STATE (CARR) TO THE CONSUL IN NEW  
ZEALAND, AS APPEARS IN VOLUME IV OF HACKWORTH'S DIGEST OF  
INTERNATIONAL LAW, AT PAGE 801:  
'IT IS BELIEVED THAT A CONSULAR OFFICE OF THIS GOVERNMENT  
SHOULD NOT ACT IN THE COLLECTION OF A TAX ON BEHALF OF A  
FOREIGN GOVERNMENT AND THE CONSULATE SHOULD THEREFORE PAY  
ITS EMPLOYEES THE FULL CONTRACTUAL SALARY, LEAVING TO THE  
EMPLOYEE THE ADJUSTMENT OF ANY TAX RELATION WITH HIS OWN  
GOVERNMENT.  
ACCORDINGLY, YOU WILL TAKE NO ACTION TO COLLECT THE TAX AND  
YOU WILL NOT EXERCISE ANY PRESSURE UPON THE EMPLOYEES OF  
THE OFFICE WITH REGARD TO THE PAYMENT OF SUCH TAXES.'

IN VIEW OF THE RULE HERETOFORE STATED AND THE POSITION MAINTAINED BY THE DEPARTMENT OF STATE, WHICH IS CHARGED WITH THE FUNCTION OF CONSIDERING MATTERS OF FOREIGN POLITICAL POLICY, THERE APPEARS TO BE NO BASIS UPON WHICH THIS OFFICE COULD REGARD THE EXPENSES OF YOUR DEPARTMENT IN WITHHOLDING INCOME TAXES ON BEHALF OF FOREIGN GOVERNMENTS AS 'NECESSARY EXPENSES' CHARGEABLE TO APPROPRIATIONS OF YOUR DEPARTMENT IN THE ABSENCE OF A STATUTE, TREATY, OR PROPER EXECUTIVE AGREEMENT AUTHORIZING THE WITHHOLDING OF SUCH TAXES. THIS IS TRUE EVEN THOUGH SUCH EXPENSES WOULD BE ONLY INCIDENTAL TO THE EXPENSE OF MAINTAINING AND OPERATING A CIVILIAN PAY ROLL OFFICE AS INDICATED IN THE LETTER FROM THE ASSISTANT SECRETARY. WHILE NOT CONTROLLING HERE, IT IS POINTED OUT THAT THE FEDERAL GOVERNMENT DOES NOT WITHHOLD TAXES IMPOSED BY MUNICIPALITIES OR STATES OF THE UNITED STATES FROM THE SALARIES OF LIMITED OFFICIAL USE

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FEDERAL EMPLOYEES. SEE 28 COMP. GEN. 101 AND 27 ID. 372.

ACCORDINGLY, I AM CONSTRAINED TO HOLD THAT THE WITHHOLDING OF INCOME TAX OF FOREIGN GOVERNMENTS FROM THE SALARIES OF NATIONALS THEREOF WHO ARE CIVILIAN EMPLOYEES AT YOUR INSTALLATIONS, ACTIVITIES, AND COMMANDS LOCATED IN THE FOREIGN COUNTRIES IS NOT AUTHORIZED, UNLESS AND UNTIL THE PRESENT EXECUTIVE AGREEMENTS ARE PROPERLY MODIFIED, OR A STATUTE OR TREATY SO PROVIDES."

2. POST SHOULD NOTE THAT FEDERAL GOVERNMENT NOW WITHHOLDS TAXES IMPOSED BY MUNICIPALITIES OR STATES OF THE UNITED STATES FROM THE SALARIES OF FEDERAL EMPLOYEES BY THE ACT OF JULY 17, 1952, 66 STAT. 765, 5 U.S.C. 84B AND EXECUTIVE ORDER NO. 10407 DATED NOVEMBER 6, 1952.  
VANCE

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Disposition Date:** 22 May 2009  
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**Executive Order:** N/A  
**Errors:** N/A  
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**Office:** ORIGIN EUR  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
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**Review Withdrawn Fields:** n/a  
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**Type:** TE  
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